



**California Department of  
Pesticide Regulation**

1001 I Street  
P.O. Box 4015  
Sacramento, CA 95812-4015  
916-445-4300

[www.cdpr.ca.gov](http://www.cdpr.ca.gov)

**BRANCHES:**

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916-324-4100

**Northern Regional Office**

916-324-4100

**Central Regional Office**

559-243-8111

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WHAT YOU NEED TO KNOW

# about

CALIFORNIA DEPARTMENT OF PESTICIDE REGULATION

## The permit process for restricted pesticides

The use of all pesticides in California is subject to controls under state and federal rules; misuse of any pesticide is a violation of these laws. California also has an extra set of rules for pesticides classified as *restricted materials*.

### WHAT IS A RESTRICTED PESTICIDE?

Certain pesticides can be especially dangerous to human health or the environment without extra oversight by regulators. Therefore, DPR restricts their use to trained individuals and then only at times and places approved by the County Agricultural Commissioners.

Before someone can buy or use a restricted material, they must get a permit from the County Agricultural Commissioner. Under State law, permits are required for agricultural uses of a pesticide but not for structural pest control (for example, to get rid of a termite infestation). Commodity treatment in fumigation chambers at ports and elsewhere is considered an agricultural use and permits are required.

Users must have permits so County Agricultural Commissioners can evaluate the effects an application might have on people and the environment *before* the pesticide is used. Requiring a permit gives Commissioners a way to have users of restricted pesticides take steps to prevent harmful effects or to use alternatives to the pesticide. California is the only state with such a pesticide permitting system.

You can ask your Commissioner for a list of these restricted materials or find it on DPR's Web site, [www.cdpr.ca.gov](http://www.cdpr.ca.gov). Click on "A-Z Index,"

then on "Permitting." The permitting page has a link to the list and also to a search engine where you can look up specific products that are restricted materials.

### HOW DOES SOMEONE GET A RESTRICTED MATERIALS PERMIT?

To get a permit, the property owner or business operator applies to the County Agricultural Commissioner. Among other things, the application must list the areas to be treated, their location and size, crops or commodities, pest problems expected, names of restricted pesticides that may be applied, and application method. If a permittee has several locations in a county (for example, different fields or facilities), they can all be covered with a single permit as long as each is clearly identified and described.

The permit application must also include a map or description of the surrounding area showing any places that could be harmed by pesticides. These could include rivers, schools, hospitals, labor camps, residential areas, endangered species habitats and nearby susceptible livestock or crops.

### HOW DOES THE COMMISSIONER DECIDE WHETHER TO ISSUE THE PERMIT?

Regulations require the Commissioner to evaluate each application to use a *restricted material* and decide if it will cause substantial harm to people or the "surrounding" environment. The size of the surrounding environment can vary based on the pesticide and how it is being applied. For example, a liquid pesticide applied from the air would potentially affect a larger surrounding area than a dry

**Users of restricted materials must have permits so County Agricultural Commissioners can evaluate the effects an application might have on people and the environment before the pesticide is used.**

pesticide applied from a tractor and worked into the soil.

If the Commissioner decides substantial harm is likely, he or she will require the permittee to evaluate alternatives (including not using a pesticide at all). The Commissioner can also impose mitigation measures. *Mitigation measures* are use controls designed to reduce the risk of harm to people or the environment.

If the Commissioner issues the permit, he or she may “condition” it on the use of certain additional precautions designed to reduce the risk of harm to people and the environment. These controls are added to those on the pesticide label and in regulation. They are tailored to the particular application site and are called *permit conditions*.

If the pesticide cannot be used safely (that is, there are no ways to reduce risk so that safe use is possible) and there are no feasible alternatives, the Commissioner **must** deny the permit application.

### **DO ALL COMMISSIONERS USE THE SAME PERMIT CONDITIONS?**

It depends on the pesticide. For certain pesticides, DPR suggests permit conditions to all Commissioners. Using scientific evaluations of potential health and environmental impacts, DPR develops suggested use practices for particular restricted pesticides. DPR recommends that Commissioners consider using these practices depending on the conditions of an application. Should DPR wish to make use restrictions a requirement statewide, the Department puts them into a regulation that has the effect of law.

DPR’s suggested permit conditions are the *minimum* measures necessary to protect people and the environment. The Commissioners use this information, with their knowledge of local conditions, to develop controls suitable for each application site at the time of application. The Commissioners may follow DPR’s advisory guidelines or they may structure their own restrictions. The law gives the Commissioners this flexibility. You can ask your Commissioner about both DPR’s suggested permit conditions and any controls he or she may decide to require.

Commissioners can impose a wide range of controls on restricted materials. For example, they can prohibit a pesticide from being used close to a school, playground, labor camp or homes. Another permit restriction might be that a pesticide cannot be applied by air. If the weather in an area is too windy at certain times of the day, a Commissioner may prohibit applications during those times. Commissioners can make permittee give advance notice to people living near an application, or they can require special protections for workers.

### **CAN THE COMMISSIONER DENY A PERMIT?**

Yes, the Commissioner must deny a permit application if he or she concludes the pesticide cannot be used safely without harming people or the environment **and** there are no restrictions that would reduce those effects. Because the applicant can appeal the denial, the Commissioner’s decision must be well-substantiated and documented.

Even after granting a permit, the Commissioner can cancel it if new information justifies such an action. For example, a housing tract may have been built since the permit was approved or an endangered species habitat found. A Commissioner can also cancel a permit if the permit holder breaks pesticide laws.

### **WHY DOESN’T THE PERMIT APPLICATION HAVE THE DATE THE PESTICIDE WILL BE USED?**

The Commissioner must approve both the place and date of pesticide treatment. Because the place doesn’t change, it is included in the permit. application along with the names of the restricted chemicals the permittee may use. Since permits are typically issued for a year and it is not possible (or desirable) to schedule pesticide treatments months in advance, applicants must let the Commissioner know each time they plan to use any of the restricted materials on their permit. They do this by filing a “notice of intent.”

The notice of intent (also called an NOI) is the second part of the permit. An NOI is required before a restricted material can be used. The applicator or farmer normally must send the NOI to the Commissioner at least 24 hours before the scheduled treatment. The notice must describe the specific site to be treated and the pesticides to be applied. It must also tell the Commissioner if there are any changes since the original permit was issued.

This notice gives the Commissioner another chance to review the proposed pesticide use and apply more restrictions if they are needed. In about one in twenty restricted material applications, county staff inspects the site before the pesticide is used. These are mainly spot checks to make sure information on the permit is accurate (for example, the surrounding area has been described correctly and conditions haven’t changed).

Sometimes things happen to delay an application. The weather may be rainy or too windy, or application equipment can break down. Farmers have up to four days to complete the work after the date the NOI says they plan to use the pesticide, although only if the delay was unanticipated. If the pesticide is not applied in four days, farmers must send in a new notice of intent.

In cases where applications are going on regularly – such as plant nurseries, commodity fumigation facilities, or along roads – a pesticide treatment schedule may be filed instead of an NOI. The schedule must be in writing, attached to the permit and updated when any changes occur.

### **HOW DO I FIND OUT ABOUT PERMITS ISSUED IN MY AREA?**

You can get copies of restricted material permits and NOIs from the Commissioner's office. There may be a fee for copying. If you have trouble understanding a permit, ask someone at the Commissioner's office to explain how the use controls described in the permit were developed and how the restrictions will protect surrounding areas.

Typically, permits are issued at the beginning of the year although they can be issued at any time. They are under the name of the owner or operator of the property. Permits usually list all the restricted pesticides the farmer believes may be needed to handle various pest problems. Since some pest problems may not occur, some listed pesticides may not be used.

DPR encourages permittees to plan their pesticide needs well in advance and communicate with people who live near application sites before applying for permits. If you are concerned about or interested in pesticide applications in your neighborhood, let your County Commissioner and neighboring farmers know. We encourage Commissioners and permittees to respond promptly to these requests and provide information about the pesticides to be applied, the restrictions on their use and how the use controls will protect people and the environment. Concerns can often be resolved before a permit is issued if people talk to one another. If a permit is later appealed, DPR will consider whether people in the area had an opportunity to voice their concerns early in the process.

You should, however, keep in mind that in a typical year about three-quarters of the pesticides used in agriculture are **not** restricted materials. If a material is not restricted, farmers do not need a permit to use it. Also, under the law, no permits are ever required for pesticides used to manage pests in buildings (for example, termites), even if the pesticides are classified as restricted materials.

### **WHAT IF I DON'T WANT A RESTRICTED PESTICIDE USED OR I WANT IT USED DIFFERENTLY?**

Your first step is to work with the Commissioner's office and ask if it is possible to revise the use restrictions on a permit. Many Commissioners work with pesticide users and the community to help avoid conflicts. For example, farmers might agree to let neighbors know of upcoming applications or agree on buffer zones around homes or schools where certain pesticides won't be used. Talk to your Commissioner about efforts to develop cooperative solutions.

If talking with the Commissioner's office does not satisfy your concerns, you can appeal the permit through a formal appeal process.

If you decide to appeal a permit, don't wait until just before the treatment is scheduled. Last-minute appeals make it much harder to resolve your concerns. Permittees who earlier in the year would have been willing to work with you may be less cooperative when faced with a potentially disastrous pest problem that needs to be dealt with quickly. State law also requires that official reviews of appeals be conducted in a way that "needed pest control measures are not adversely affected." This means the earlier you file your appeal, the more time there will be to work out a solution.

### **WHAT ABOUT NON-RESTRICTED MATERIALS? CAN CONTROLS BE PLACED ON THEIR USE?**

Occasionally, an Agricultural Commissioner finds there is a local problem in using a pesticide that is not on DPR's restricted material list. This situation may occur in counties where residential subdivisions are very close to farms.

Under the law, Commissioners can require a farmer to get permit for a pesticide not on the restricted materials list if they determine that, under local conditions, the pesticide's use presents an unacceptable risk. To make this determination, the Commissioner must describe the excessive hazard that results when the pesticide is used in that particular situation. The Commissioner can require that all farmers in the county get a permit to use the pesticide, just farmers in a part of the county where the risk is greatest or only in certain situations (for example, when the pesticide is used near schools). Requiring a permit allows the Commissioner to review each proposed use to make sure the pesticide can be used safely. If it can't, the Commissioner can deny the permit. If the permit is issued, the Commissioner can require certain use practices in addition to those on the product labeling. For example, he or she can set a buffer zone near homes or schools, prohibit applications by air or limit acreage treated at any one time.

**If you don't want a restricted pesticide used or want it used differently, your first step is to work with the Commissioner's office to see if it is possible to revise the use restrictions on the permit.**

## **WHAT STEPS ARE THERE IN FILING AN APPEAL?**

You must file your appeal in writing. You will need the following information (much of it found on the permit):

- Location of the property where the pesticide is to be used.
- Name of the pesticide.
- Name and address of the operator of the property.
- Location of people, property or areas that would be affected by the application.
- The reasons you want a review and what actions you want the Commissioner's office to take. What you ask for depends on the situation. You may want the permit denied or canceled. Or you may feel a bigger buffer zone is needed. Do you want to be told in advance of the day and time of any restricted material application to the property? Are you requesting that no aerial applications be done in a certain area? That treatment occurs only when school is not in session? Remember: Typically, you can only ask for extra controls when a restricted material is being used.

Be as factual and specific as possible. If you need help or have questions, ask the Commissioner's office or call DPR's regional office.

Under the law, the Commissioner must respond to your appeal in writing within 10 days or as soon as practical. DPR strongly encourages Commissioners to try to meet the 10-day turnaround. After reviewing your appeal, the Commissioner may decide the application can go on as scheduled, may require more controls, or may cancel the permit. Any directly affected party including the farmer can appeal the Commissioner's decision to DPR.

## **IS THE PESTICIDE TREATMENT PUT ON HOLD WHEN I FILE MY APPEAL?**

Both the Commissioner and DPR stop any applications on the permit while an appeal is reviewed. However, the law also requires that permit reviews be done so "needed pest control measures" are not affected. Therefore, pesticide treatment may be allowed if a delay would mean damage to a crop. DPR's policy is also that the Commissioner and DPR consider allowing the treatment if the person filing the appeal knew about the permit well in advance but did not file an appeal until just before the scheduled application.

## **WHAT IF I DON'T LIKE THE COMMISSIONER'S DECISION ON MY APPEAL?**

Under State law, you can appeal a permit decision if you are a "directly affected" person. This could be someone who lives no farther than about a half-mile from the pesticide application site. That person may wish to appeal the Commissioner's decision on use controls or on issuing the permit at all. The directly affected person can also be the grower or facility operator, who may wish to appeal a canceled permit or permit conditions he or she feels are not justified.

## **HOW TO APPEAL THE COUNTY COMMISSIONER'S DECISION TO DPR**

If you want to challenge the Commissioner's decision on a permit, you must do so in writing. Send the information including your name and contact information to:

Director  
California Department of Pesticide Regulation  
1001 I Street, P.O. Box 4015  
Sacramento, CA 94812  
Fax: 916-324-1452

Under the law, DPR must respond within 10 days of receiving your appeal or as soon as possible after that. DPR will work with the Commissioner's office to find a suitable place to hold what the law calls a "public review" of your appeal. You will be told at least 72 hours before of the date, time and location. The public review is not a formal hearing, but DPR's representative may ask questions of the person who filed the appeal, the Commissioner, the grower and others.

Under the law, when DPR reviews an appeal, we can only consider three things about the permit:

1. Whether the proposed use is consistent with pesticide label restrictions and regulations.
2. Whether the Commissioner properly considered the health and environmental impacts on surrounding areas, imposed reasonable mitigation measures, and reviewed feasible alternatives.
3. Whether the Commissioner abused his or her discretion in issuing, refusing, revoking or conditioning the permit.

If you speak at the public review, try to be as factual as possible. Focus your remarks on the proposed pesticide use on the permit. You may, of course, speak about any issue you feel is relevant. Remember: DPR's review is limited under the law to the three points and to the particular permit being appealed.